

SN 09/459,237

Page 2 of 3

**REMARKS****Restriction Requirement**

The Examiner has required restriction to one of the following inventions under 35 U.S.C. §121:

- I. Claims 1-6 and 7-9, drawn to a rate generator for generating a plurality of frequencies, classified in class 370, subclass 518.
- II. Claims 10-14, drawn to a method of deriving a rate generator having a plurality of accumulators, classified in class 370, subclass 518.

As noted by the MPEP §803, an application may properly be required to be restricted to one of two or more claimed Inventions only if they are able to support separate patents and they are either independent or distinct. If the search and examination of an entire application can be made without serious burden, the Examiner must examine it on its merits even though it includes claims to independent or distinct inventions.

The above portion of the MPEP lays out the propriety of a restriction requirement. In this instance, the Examiner indicates that all claims pertain to a rate generator and that all claims are classified in class 370, subclass 518 (claims 1-9 disclose a rate generator, while claims 10-14 disclose a method of deriving a rate generator). The Applicants believe that even if the claims between the two groups are distinct, there is no "serious burden" imposed upon the Examiner for searching both groups. The Examiner's main contention seems to be that a search required for Group I is not necessarily required for Group II. This seems to imply that a search for Group I will retrieve the appropriate prior art for Group II. This provides a further indication that no serious burden is imposed upon the Examiner for searching both groups.

The Applicants elect, if necessary, Group I for searching.

In the event that the restriction requirement is upheld, the Applicants reserve the right to subsequently file divisional applications in order to prosecute the inventions recited in any one or more of the non-elected claims in Group II.

SN 09/459,237

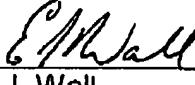
Page 3 of 3

**CONCLUSION**

If the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner telephone Eamon J. Wall, Esq. at (732) 530-9404 so that appropriate arrangements can be made for resolving such issues as expeditiously as possible.

Respectfully submitted,

Dated: 6/2/05

  
\_\_\_\_\_  
Eamon J. Wall  
Registration No. 39,414  
Attorney for Applicant

MOSER, PATTERSON & SHERIDAN, LLP  
595 Shrewsbury Avenue, Suite 100  
Shrewsbury, New Jersey 07702  
Telephone: 732-530-9404  
Facsimile: 732-530-9808

365764-1